

# Notice of Allowability

## Application No.

09/827,846

## Examiner

Gailene R. Gabel

## Applicant(s)

EDA ET AL.

## Art Unit

1641

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appellant's Brief filed 6/22/04.
2. ☒ The allowed claim(s) is/are 1-4, 6, 9, 10, 20, 22, and 23; now renumbered as claims 1-10, respectively.
3. ☒ The drawings filed on 19 December 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/129,744.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 8/11/04.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*8/11/04*

## **REASONS FOR ALLOWANCE**

1. The following is an examiner's statement of reasons for allowance: The prior art of record does not teach or fairly suggest an agglutination assay reagent comprising a binary population of microparticles having a mean diameter size of 30 nm to 600 nm and capable of causing light scattering a wavelengths between 300 and 1200 nm, and wherein the first population of microparticles have a greater mean diameter, greater refractive index, stronger light scattering properties, and have a binding partner with a higher reactivity for an analyte than the binding partner for the analyte coated upon the corresponding second population of microparticles. Lindmo et al., cited for teaching a reagent comprising a binary mixture of microparticles in flow cytometry, does not teach or suggest a mean diameter of 30 nm to 600 nm for the microparticles for each population of microparticles. Grange et al., cited for teaching an agglutination reagent comprising 300 nm mean diameter of microparticles does not teach or suggest binary populations of microparticles in the reagent for use in an agglutination assay.

2. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1641

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (571) 272-0820. The examiner can normally be reached on Monday, Tuesday, and Thursday, 7:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gailene R. Gabel  
Patent Examiner  
Art Unit 1641  
August 11, 2004

*GR*

*Christopher L. Chin*

CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP ~~1800~~ 1641  
*8/12/04*